

AMENDED IN SENATE JUNE 23, 2014

AMENDED IN ASSEMBLY APRIL 1, 2014

AMENDED IN ASSEMBLY MARCH 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1562**

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**Introduced by Assembly Member Gomez**

January 29, 2014

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An act to amend Section 12945.2 of the Government Code, relating to employment.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1562, as amended, Gomez. Employment: leave.

The Moore-Brown-Roberti Family Rights Act makes it an unlawful employment practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period (1) to bond with a child who was born to, adopted by, or placed for foster care with, the employee, (2) to care for the employee's parent, spouse, or child who has a serious health condition, as defined, or (3) because the employee is suffering from a serious health condition rendering him or her unable to perform the functions of the job. Under the act, an employee is required to have more than 12 months of service with the employer and at least 1,250 hours of service with the employer during the previous 12-month period.

The act authorizes an employer to refuse to reinstate an employee returning from leave under specified circumstances.

*This bill would designate an eligible employee as an entitled employee. The bill, with respect to a public or private school employee,*

would require either 1,250 hours of service with the employer during the previous 12-month period or service during that period of at least 60% of the hours that an employee who is employed full time is required to perform in a school year.

The bill would exempt public and private school employees from that reinstatement exception.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12945.2 of the Government Code is  
2 amended to read:

3 12945.2. (a) Except as provided in subdivision (b), it is an  
4 unlawful employment practice for an employer to refuse to grant  
5 a request by an ~~eligible~~ *entitled* employee to take up to a total of  
6 12 workweeks in any 12-month period for family care and medical  
7 leave. Family care and medical leave requested pursuant to this  
8 subdivision shall not be deemed to have been granted unless the  
9 employer provides the employee, upon granting the leave request,  
10 a guarantee of employment in the same or a comparable position  
11 upon the termination of the leave. The commission shall adopt a  
12 regulation specifying the elements of a reasonable request.

13 (b) Notwithstanding subdivision (a), it is not an unlawful  
14 employment practice for an employer to refuse to grant a request  
15 for family care and medical leave by an employee if the employer  
16 employs fewer than 50 employees within 75 miles of the worksite  
17 where that employee is employed.

18 (c) For purposes of this section:

19 (1) "Child" means a biological, adopted, or foster child, a  
20 stepchild, a legal ward, or a child of a person standing in loco  
21 parentis who is either of the following:

22 (A) Under 18 years of age.

23 (B) An adult dependent child.

24 (2) "Employer" means either of the following:

25 (A) Any person who directly employs 50 or more persons to  
26 perform services for a wage or salary.

27 (B) The state, and any political or civil subdivision of the state  
28 and cities.

1 (3) ~~“Eligible”~~ “*Entitled* employee” means an employee with  
2 more than 12 months of service with the employer, and who  
3 complies with one of the following:

4 (A) Has at least 1,250 hours of service with the employer during  
5 the previous 12-month period.

6 (B) Is a public or private school employee who has served,  
7 during the previous 12-month period, at least 60 percent of the  
8 hours of service that an employee who is employed full time is  
9 required to perform in a school year.

10 (4) “Family care and medical leave” means any of the following:

11 (A) Leave for reason of the birth of a child of the employee, the  
12 placement of a child with an employee in connection with the  
13 adoption or foster care of the child by the employee, or the serious  
14 health condition of a child of the employee.

15 (B) Leave to care for a parent or a spouse who has a serious  
16 health condition.

17 (C) Leave because of an employee’s own serious health  
18 condition that makes the employee unable to perform the functions  
19 of the position of that employee, except for leave taken for  
20 disability on account of pregnancy, childbirth, or related medical  
21 conditions.

22 (5) “Employment in the same or a comparable position” means  
23 employment in a position that has the same or similar duties and  
24 pay that can be performed at the same or similar geographic  
25 location as the position held prior to the leave.

26 (6) “FMLA” means the federal Family and Medical Leave Act  
27 of 1993 (Public Law 103-3).

28 (7) “Health care provider” means any of the following:

29 (A) An individual holding either a physician’s and surgeon’s  
30 certificate issued pursuant to Article 4 (commencing with Section  
31 2080) of Chapter 5 of Division 2 of the Business and Professions  
32 Code, an osteopathic physician’s and surgeon’s certificate issued  
33 pursuant to Article 4.5 (commencing with Section 2099.5) of  
34 Chapter 5 of Division 2 of the Business and Professions Code, or  
35 an individual duly licensed as a physician, surgeon, or osteopathic  
36 physician or surgeon in another state or jurisdiction, who directly  
37 treats or supervises the treatment of the serious health condition.

38 (B) Any other person determined by the United States Secretary  
39 of Labor to be capable of providing health care services under the  
40 FMLA.

1 (8) “Parent” means a biological, foster, or adoptive parent, a  
2 stepparent, a legal guardian, or other person who stood in loco  
3 parentis to the employee when the employee was a child.

4 (9) “Serious health condition” means an illness, injury,  
5 impairment, or physical or mental condition that involves either  
6 of the following:

7 (A) Inpatient care in a hospital, hospice, or residential health  
8 care facility.

9 (B) Continuing treatment or continuing supervision by a health  
10 care provider.

11 (d) An employer shall not be required to pay an employee for  
12 any leave taken pursuant to subdivision (a), except as required by  
13 subdivision (e).

14 (e) An employee taking a leave permitted by subdivision (a)  
15 may elect, or an employer may require the employee, to substitute,  
16 for leave allowed under subdivision (a), any of the employee’s  
17 accrued vacation leave or other accrued time off during this period  
18 or any other paid or unpaid time off negotiated with the employer.  
19 If an employee takes a leave because of the employee’s own serious  
20 health condition, the employee may also elect, or the employer  
21 may also require the employee, to substitute accrued sick leave  
22 during the period of the leave. However, an employee shall not  
23 use sick leave during a period of leave in connection with the birth,  
24 adoption, or foster care of a child, or to care for a child, parent, or  
25 spouse with a serious health condition, unless mutually agreed to  
26 by the employer and the employee.

27 (f) (1) During any period that an ~~eligible~~ *entitled* employee  
28 takes leave pursuant to subdivision (a) or takes leave that qualifies  
29 as leave taken under the FMLA, the employer shall maintain and  
30 pay for coverage under a “group health plan,” as defined in Section  
31 5000(b)(1) of the Internal Revenue Code, for the duration of the  
32 leave, not to exceed 12 workweeks in a 12-month period,  
33 commencing on the date leave taken under the FMLA commences,  
34 at the level and under the conditions coverage would have been  
35 provided if the employee had continued in employment  
36 continuously for the duration of the leave. Nothing in the preceding  
37 sentence shall preclude an employer from maintaining and paying  
38 for coverage under a “group health plan” beyond 12 workweeks.  
39 An employer may recover the premium that the employer paid as  
40 required by this subdivision for maintaining coverage for the

1 employee under the group health plan if both of the following  
2 conditions occur:

3 (A) The employee fails to return from leave after the period of  
4 leave for which the employee is ~~eligible~~ *entitled* has expired.

5 (B) The employee's failure to return from leave is for a reason  
6 other than the continuation, recurrence, or onset of a serious health  
7 condition that entitles the employee to leave under subdivision (a)  
8 or other circumstances beyond the control of the employee.

9 (2) (A) Any employee taking leave pursuant to subdivision (a)  
10 shall continue to be ~~eligible~~ *entitled* to participate in employee  
11 health plans for any period during which coverage is not provided  
12 by the employer under paragraph (1), employee benefit plans,  
13 including life insurance or ~~short-term~~ *short-* or long-term disability  
14 or accident insurance, pension and retirement plans, and  
15 supplemental unemployment benefit plans to the same extent and  
16 under the same conditions as apply to an unpaid leave taken for  
17 any purpose other than those described in subdivision (a). In the  
18 absence of these conditions an employee shall continue to be  
19 ~~eligible~~ *entitled* to participate in these plans and, in the case of  
20 health and welfare employee benefit plans, including life insurance  
21 or ~~short-term~~ *short-* or long-term disability or accident insurance,  
22 or other similar plans, the employer may, at his or her discretion,  
23 require the employee to pay premiums, at the group rate, during  
24 the period of leave not covered by any accrued vacation leave, or  
25 other accrued time off, or any other paid or unpaid time off  
26 negotiated with the employer, as a condition of continued coverage  
27 during the leave period. However, the nonpayment of premiums  
28 by an employee shall not constitute a break in service, for purposes  
29 of longevity, seniority under any collective bargaining agreement,  
30 or any employee benefit plan.

31 (B) For purposes of pension and retirement plans, an employer  
32 shall not be required to make plan payments for an employee  
33 during the leave period, and the leave period shall not be required  
34 to be counted for purposes of time accrued under the plan.  
35 However, an employee covered by a pension plan may continue  
36 to make contributions in accordance with the terms of the plan  
37 during the period of the leave.

38 (g) During a family care and medical leave period, the employee  
39 shall retain employee status with the employer, and the leave shall  
40 not constitute a break in service, for purposes of longevity, seniority

1 under any collective bargaining agreement, or any employee benefit  
2 plan. An employee returning from leave shall return with no less  
3 seniority than the employee had when the leave commenced, for  
4 purposes of layoff, recall, promotion, job assignment, and  
5 seniority-related benefits such as vacation.

6 (h) If the employee's need for a leave pursuant to this section  
7 is foreseeable, the employee shall provide the employer with  
8 reasonable advance notice of the need for the leave.

9 (i) If the employee's need for leave pursuant to this section is  
10 foreseeable due to a planned medical treatment or supervision, the  
11 employee shall make a reasonable effort to schedule the treatment  
12 or supervision to avoid disruption to the operations of the employer,  
13 subject to the approval of the health care provider of the individual  
14 requiring the treatment or supervision.

15 (j) (1) An employer may require that an employee's request  
16 for leave to care for a child, a spouse, or a parent who has a serious  
17 health condition be supported by a certification issued by the health  
18 care provider of the individual requiring care. That certification  
19 shall be sufficient if it includes all of the following:

20 (A) The date on which the serious health condition commenced.

21 (B) The probable duration of the condition.

22 (C) An estimate of the amount of time that the health care  
23 provider believes the employee needs to care for the individual  
24 requiring the care.

25 (D) A statement that the serious health condition warrants the  
26 participation of a family member to provide care during a period  
27 of the treatment or supervision of the individual requiring care.

28 (2) Upon expiration of the time estimated by the health care  
29 provider in subparagraph (C) of paragraph (1), the employer may  
30 require the employee to obtain recertification, in accordance with  
31 the procedure provided in paragraph (1), if additional leave is  
32 required.

33 (k) (1) An employer may require that an employee's request  
34 for leave because of the employee's own serious health condition  
35 be supported by a certification issued by his or her health care  
36 provider. That certification shall be sufficient if it includes all of  
37 the following:

38 (A) The date on which the serious health condition commenced.

39 (B) The probable duration of the condition.

1 (C) A statement that, due to the serious health condition, the  
2 employee is unable to perform the function of his or her position.

3 (2) The employer may require that the employee obtain  
4 subsequent recertification regarding the employee's serious health  
5 condition on a reasonable basis, in accordance with the procedure  
6 provided in paragraph (1), if additional leave is required.

7 (3) (A) In any case in which the employer has reason to doubt  
8 the validity of the certification provided pursuant to this section,  
9 the employer may require, at the employer's expense, that the  
10 employee obtain the opinion of a second health care provider,  
11 designated or approved by the employer, concerning any  
12 information certified under paragraph (1).

13 (B) The health care provider designated or approved under  
14 subparagraph (A) shall not be employed on a regular basis by the  
15 employer.

16 (C) In any case in which the second opinion described in  
17 subparagraph (A) differs from the opinion in the original  
18 certification, the employer may require, at the employer's expense,  
19 that the employee obtain the opinion of a third health care provider,  
20 designated or approved jointly by the employer and the employee,  
21 concerning the information certified under paragraph (1).

22 (D) The opinion of the third health care provider concerning  
23 the information certified under paragraph (1) shall be considered  
24 to be final and shall be binding on the employer and the employee.

25 (4) As a condition of an employee's return from leave taken  
26 because of the employee's own serious health condition, the  
27 employer may have a uniformly applied practice or policy that  
28 requires the employee to obtain certification from his or her health  
29 care provider that the employee is able to resume work. Nothing  
30 in this paragraph shall supersede a valid collective bargaining  
31 agreement that governs the return to work of that employee.

32 (I) It is an unlawful employment practice for an employer to  
33 refuse to hire, or to discharge, fine, suspend, expel, or discriminate  
34 against, any individual because of any of the following:

35 (1) An individual's exercise of the right to family care and  
36 medical leave provided by subdivision (a).

37 (2) An individual's giving information or testimony as to his or  
38 her own family care and medical leave, or another person's family  
39 care and medical leave, in any inquiry or proceeding related to  
40 rights guaranteed under this section.

1 (m) This section shall not be construed to require any changes  
2 in existing collective bargaining agreements during the life of the  
3 contract, or until January 1, 1993, whichever occurs first.

4 (n) The amendments made to this section by Chapter 827 of the  
5 Statutes of 1993 shall not be construed to require any changes in  
6 existing collective bargaining agreements during the life of the  
7 contract, or until February 5, 1994, whichever occurs first.

8 (o) This section shall be construed as separate and distinct from  
9 Section 12945.

10 (p) Leave provided for pursuant to this section may be taken in  
11 one or more periods. The 12-month period during which 12  
12 workweeks of leave may be taken under this section shall run  
13 concurrently with the 12-month period under the FMLA, and shall  
14 commence the date leave taken under the FMLA commences.

15 (q) In any case in which both parents ~~eligible~~ *entitled* for leave  
16 under subdivision (a) are employed by the same employer, the  
17 employer shall not be required to grant leave in connection with  
18 the birth, adoption, or foster care of a child that would allow the  
19 parents family care and medical leave totaling more than the  
20 amount specified in subdivision (a).

21 (r) (1) Notwithstanding subdivision (a), an employer may refuse  
22 to reinstate an employee returning from leave to the same or a  
23 comparable position if all of the following apply:

24 (A) The employee is a salaried employee who is among the  
25 highest paid 10 percent of the employer's employees who are  
26 employed within 75 miles of the worksite at which that employee  
27 is employed.

28 (B) The refusal is necessary to prevent substantial and grievous  
29 economic injury to the operations of the employer.

30 (C) The employer notifies the employee of the intent to refuse  
31 reinstatement at the time the employer determines the refusal is  
32 necessary under subparagraph (B).

33 (2) In any case in which the leave has already commenced, the  
34 employer shall give the employee a reasonable opportunity to  
35 return to work following the notice prescribed by subparagraph  
36 (C).

37 (3) This subdivision does not apply to public or private school  
38 employees.

39 (s) Leave taken by an employee pursuant to this section shall  
40 run concurrently with leave taken pursuant to the FMLA, except



1 for any leave taken under the FMLA for disability on account of  
2 pregnancy, childbirth, or related medical conditions. The aggregate  
3 amount of leave taken under this section or the FMLA, or both,  
4 except for leave taken for disability on account of pregnancy,  
5 childbirth, or related medical conditions, shall not exceed 12  
6 workweeks in a 12-month period. An employee ~~may~~ *is entitled to*  
7 take, in addition to the leave provided for under this section and  
8 the FMLA, the leave provided for in Section 12945, if the  
9 employee is otherwise qualified for that leave.

10 (t) It is an unlawful employment practice for an employer to  
11 interfere with, restrain, or deny the exercise of, or the attempt to  
12 exercise, any right provided under this section.